

UPPER CANADA.

Statute 3d. Wm. IV. Chap. 4.

RELATING TO CAPITAL OFFENCES;

WITH AN EXPOSITION OF ITS PROVISIONS,

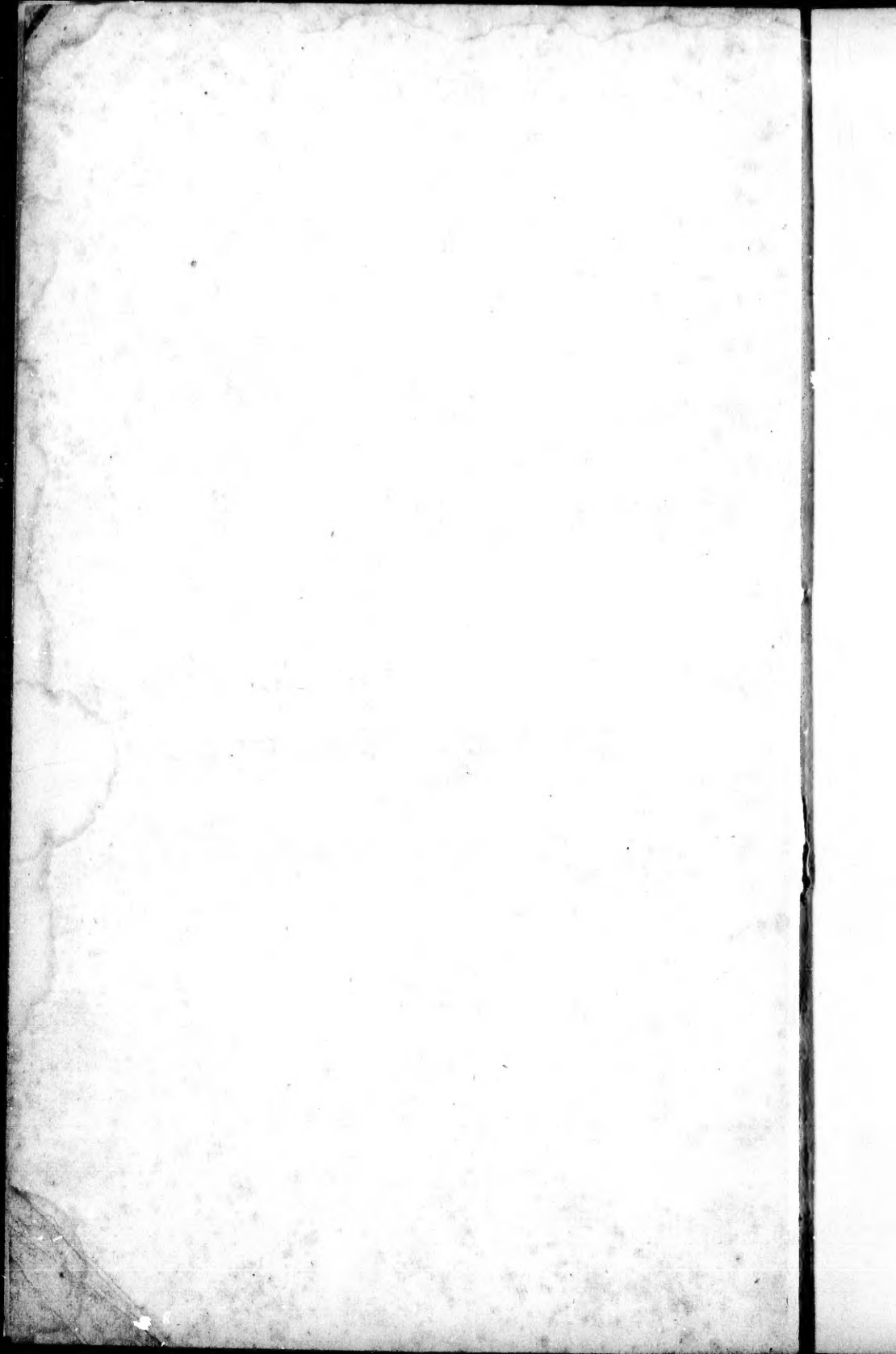
IN A CHARGE OF

CHIEF JUSTICE ROBINSON,

TO THE GRAND JURY OF THE HOME DISTRICT;

APRIL, 1833.

York, Upper Canada : Printed by ROBERT STANTON.



Ch. J. H. H. Esq.

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With the C. Justice's Comments

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An ACT to reduce the number of cases in which Capital Punishment may be inflicted; to provide other punishment for offences which shall no longer be Capital after the passing of this Act; to abolish the privilege called benefit of Clergy; and to make other alterations in certain Criminal proceedings before and after conviction.

Preamble. **WHEREAS** it is fit that it should be plainly declared in the Statutes of this Province, for what crimes offenders shall be liable to be punished with death: And whereas it does not seem to be indispensable, for the security and well being of society, that the punishment of death should be inflicted in any other cases than those hereinafter mentioned:—*Be it therefore enacted* by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Assembly of the Province of Upper Canada, constituted and assembled by virtue of and under the authority of an Act passed in the Parliament of Great Britain, entitled, "An Act to repeal certain parts of an Act passed in the fourteenth year of His Majesty's Reign, entitled 'An Act for making more effectual provision for the Government of the Province of Quebec, in North America,' and to make further provision for the Government of the said Province," and by the authority of the same, That if a person do compass or What offences shall be Capital. High Treason. imagine the Death of our Lord the King, or if a person do levy War against our Lord the King, in this Province, or be adherent to the King's enemies in this Province, giving to them aid and comfort, in this Province or elsewhere, and thereof be provably attainted of open deed by people of his condition, such person so attainted shall be deemed guilty of Treason, and shall suffer Death.

Murder. II. *And be it further enacted by the authority aforesaid,* That every person convicted of Murder, or of being an accessory before the fact to murder, shall suffer Death as a Felon.

Petit Treason *III. And be it further enacted by the authority aforesaid,* That every offence which, before the passing of this Act, would have amounted to Petit Treason, shall be deemed to be Murder only, and no greater or other offence; and all persons guilty in respect thereof, whether as principals or accessories, shall be dealt with, indicted, tried, and punished as principals and accessories in Murder.

Rescuing persons convicted of murder or committed for murder. *IV. And be it further enacted by the authority aforesaid,* That if any person or persons whatsoever shall by force set at liberty or rescue, or attempt to rescue or set at liberty, any person out of prison, who shall be committed for, or found guilty of Murder; or rescue, or attempt to rescue, any person convicted of Murder going to execution, or during execution, every person so offending shall be deemed, taken, and adjudged to be guilty of Felony, and shall suffer Death.

Rape. *V. And be it further enacted by the authority aforesaid,* That every person convicted of the crime of Rape, shall suffer death as a Felon.

Carnal knowledge of a girl under ten years of age. *VI. And be it further enacted by the authority aforesaid,* That if any person shall unlawfully carnally know, and abuse any Girl under the age of ten years, every such offender shall be guilty of Felony, and being convicted thereof, shall suffer Death as a Felon.

Sodomy. *VII. And be it further enacted by the authority aforesaid,* That every person convicted of the abominable crime of Buggery, committed either with mankind or with any animal, shall suffer Death as a Felon.

Robbery. *VIII. And be it further enacted by the authority aforesaid,* That if any person shall Rob any other person of any Chattel, Money, or valuable Security; or shall Rob any person carrying or conveying, or having charge of **Robbing the Mail.** His Majesty's Mail, in any part of this Province, of any letter or letters, packet or packets, bag or mail of Letters, every such offender, being convicted thereof, shall suffer death as a Felon: and such offences shall and may be inquired of, tried and determined, either in the District **Place of trial.**

in which the offence shall be committed, or in which the offender shall or may be apprehended.

Burglary. IX. *And be it further enacted by the authority aforesaid,* That every person convicted of Burglary shall suffer Death as a Felon.

What shall be deemed to be part of the Dwelling-house. X. *Provided always, and be it further enacted by the authority aforesaid,* That no building, although within the same curtilage with the Dwelling-House, and occupied therewith, shall be deemed to be part of such Dwelling-House, for the purpose of Burglary, unless there shall be a communication between such Building and Dwelling-House, either immediate or by means of a covered and enclosed passage leading from the one to the other.

Arson. XI. *And be it further enacted by the authority aforesaid,* That if any person shall unlawfully and maliciously set fire to any Church or Chapel, or to any Building commonly used for Religious Worship, or to any House, Stable, Coach-House, Out-House, Ware-House, Office, Shop, Mill, Malt-House, Barn or Granary, or to any Building or Erection used in carrying on any trade or manufacture, or any branch thereof, whether the same, or any of them respectively, shall then be in the possession of the offender, or in the possession of any other person, with intent thereby to injure or defraud any person, or any Body Corporate, or Company of persons, every such offender shall be guilty of Felony, and being convicted thereof, shall suffer Death as a Felon.

Accessories before the fact. XII. *And be it further enacted by the authority aforesaid,* That every person convicted of being an accessory before the fact to any of the offences made Capital by this Act, shall suffer Death as in cases of Felony.

British Statute, 1 Geo. 1, c. 5, commonly called "The Riot Act," recited. XIII. *And whereas,* for the preventing and suppressing of Riots and Tumults, and for the more speedy and effectual punishing the offenders therein, an Act was passed in the Parliament of Great Britain, in the first year of the reign of King George the First, entitled "*An Act for preventing Tumults and Riotous Assemblies, and for the more speedy and effectual punishing the Rioters,*" whereby it is among other things

enacted, that "if any persons to the number of twelve, or
 "more, being unlawfully, riotously, and tumultuously assem-
 "bled together, to the disturbance of the Public Peace, at any
 "time after the last day of July, in the year of our Lord, one
 "thousand seven hundred and fifteen, and being required or
 "commanded by any one or more Justice or Justices of the
 "Peace, or by the Sheriff of the County, or his Under Sheriff,
 "or by the Mayor, Bailiff or Bailiffs, or other Head Officer, or
 "Justice of the Peace of any City, or Town Corporate, where
 "such Assembly shall be, by Proclamation, to be made in the
 "King's name, in the form in the said Act directed, to disperse
 "themselves and peaceably to depart to their habitations, or to
 "their lawful business, shall, to the number of twelve or more,
 "(notwithstanding such Proclamation made) unlawfully, riot-
 "ously and tumultuously remain or continue together by the
 "space of one hour after such command or request made by Pro-
 "clamation, that then such continuing together to the number of
 "twelve or more, after such command or request made by Pro-
 "clamation, shall be adjudged Felony without benefit of Clergy,
 "and the offenders therein shall be adjudged Felons, and shall
 "suffer death as in case of Felony, without benefit of Clergy."
 And it is in the said Act further enacted, that "the order and
 "form of the Proclamation which shall be made by the autho-
 "rity of the said Act shall be as hereafter followeth, (that is to
 "say):—That the Justice of the Peace, or other person autho-
 "rised by the said Act to make the said Proclamation, shall,
 "among the said Rioters, or as near to them as he can safely
 "come, with a loud voice command, or cause to be commanded,
 "silence to be while Proclamation is making; and after that,
 "shall openly and with a loud voice make, or cause to be made,
 "Proclamation in these words, or like in effect:—

Proclama-
 tion for
 Rioters to
 disperse.

"OUR SOVEREIGN LORD THE KING Chargeth and
 "Commandeth all persons being assembled im-
 "mediately to disperse themselves, and peace-
 "ably to depart to their habitations or to their
 "lawful business, upon the pains contained in
 "the Act made in the First Year of King
 "George, for preventing tumults and riotous
 "assemblies.—GOD SAVE THE KING."

"And every such Justice, and Justices of the Peace, Sheriff,
 "Under Sheriff, Mayor, Bailiff, and other Head Officer afore-

" said, within the limits of their respective Jurisdictions, are by
 " the said Act authorised, empowered, and required, on notice
 " or knowledge of any such unlawful, riotous and tumultuous
 " assembly, to resort to the place where such unlawful, riotous
 " and tumultuous assemblies shall be, of persons to the number
 " of twelve, or more, and there to make, or cause to be made,
 " Proclamation in manner aforesaid." And it is in the said Act
 " further enacted, that " if such persons so unlawfully, riotously
 " and tumultuously assembled, or twelve or more of them, after
 " Proclamation made in manner aforesaid, shall continue toge-
 " ther, and not disperse themselves within one hour, that then
 " it shall and may be lawful to and for every Justice of the
 " Peace, Sheriff, or Under Sheriff of the County where such
 " assemblies shall be, and also to and for every High and Petty
 " Constable, and other Peace Officer within such County, and
 " also to and for every Mayor, Justice of the Peace, Sheriff,
 " Bailiff, and other Head Officer, High or Petty Constable,
 " and other Peace Officer of any City or Town Corporate,
 " where such assembly shall be, and to and for such other per-
 " son and persons as shall be commanded, to be assisting unto
 " any such Justice of the Peace, Sheriff or Under Sheriff,
 " Mayor, Bailiff, or other Head Officer aforesaid, (who are
 " thereby authorised and empowered to command all His Majes-
 " ty's Subjects of age and ability, to be assisting to them there-
 " in,) to seize and apprehend, and they are thereby required to
 " seize and apprehend, such persons so unlawfully, riotously,
 " and tumultuously continuing together, after Proclamation
 " made as aforesaid, and forthwith to carry the persons so ap-
 " prehended before one or more of His Majesty's Justices of
 " the Peace of the County or place where such persons shall be
 " so apprehended, in order to their being proceeded against
 " for such their offences according to Law; and that if the
 " persons so unlawfully, riotously, and tumultuously assembled,
 " or any of them, shall happen to be killed, maimed or hurt,
 " in the dispersing, seizing or apprehending, or endeavouring
 " to disperse, seize or apprehend them, by reason of their resist-
 " ing the persons so dispersing, seizing or apprehending, or
 " endeavouring to disperse, seize or apprehend them, that then
 " every such Justice of the Peace, Sheriff, Under Sheriff,
 " Mayor, Bailiff, Head Officer, High or Petty Constable, or
 " other Peace Officer, and all and singular, persons being aid-

"ing and assisting to them, or any of them, shall be free, dis-
 "charged and indemnified, as well against the King's Majesty,
 "His Heirs and Successors, as against all and every other
 "person and persons, of, for, or concerning the killing, maim-
 "ing, or hurting of any such person or persons, so unlawfully,
 "riotously and tumultuously assembled, that shall happen to
 "be so killed, maimed, or hurt as aforesaid." And it is in
 "the said Act further enacted, that "if any persons unlawfully,
 "riotously and tumultuously assembled together, to the disturb-
 "ance of the Public Peace, shall unlawfully, and with force,
 "demolish or pull down, or begin to demolish or pull down,
 "any Church, Chapel, or any Building for Religious Worship,
 "certified and Registered according to the Statute made in
 "the first year of the Reign of the late King William and
 "Queen Mary, entitled "*An Act for exempting their Majes-
 "ty's Protestant Subjects dissenting from the Church of Eng-
 "land from the Penalties of certain Laws;*" or any "Dwel-
 "ling-house, Barn, Stable, or other Out-house, that then every
 "such demolishing or pulling down, or beginning to demolish
 "or pull down, shall be adjudged Felony, without benefit of
 "Clergy, and the offenders therein shall be adjudged Felons,
 "and shall suffer Death as in case of Felony, without benefit
 "of Clergy." And it is in the said Act further enacted, that
 "if any person or persons do, or shall with force and arms,
 "wilfully and knowingly oppose, obstruct, or in any manner
 "wilfully and knowingly let, hinder or hurt, any person or per-
 "sons that shall begin to proclaim, or go to proclaim, accord-
 "ing to the Proclamation thereby directed to be made, whereby
 "such Proclamation shall not be made, that then every such
 "opposing, obstructing, letting, hindering, or hurting such
 "person or persons so beginning or going to make such Pro-
 "clamation as aforesaid, shall be adjudged Felony without
 "benefit of Clergy, and the offenders therein shall be adjudged
 "Felons, and shall suffer Death as in case of Felony, without
 "benefit of Clergy; and that also every such person or persons
 "so being unlawfully, riotously and tumultuously assembled,
 "to the number of twelve as aforesaid, or more, to whom Pro-
 "clamation should or ought to have been made, if the same
 "had not been hindered, as aforesaid, shall likewise, in case
 "they or any of them, to the number of twelve or more, shall

"continue together, and not disperse themselves within one hour after such let or hindrance so made, having knowledge of such let or hindrance so made, shall be adjudged Felons, and shall suffer death as in case of Felony, without benefit of Clergy." And it is in the said Act further enacted, that no person or persons shall be prosecuted by virtue of the said Act, for any offence or offences committed contrary to the same, unless such prosecution be commenced within twelve months after the offence committed: "Be it enacted, by and with the authority aforesaid, That nothing in this Act contained shall affect or be construed to affect, or in any manner to repeal or vary any of the provisions in the said Act contained, but the same shall continue and remain, as if this Act had not been passed.—*Provided nevertheless, and it is hereby enacted by the authority aforesaid, That the provisions in the fourth clause of the same Act shall apply and extend to all Churches or Chapels, or Places for Religious Worship in this Province, notwithstanding the same, or any of them, shall not be certified or registered, as provided in the said Act.*

The provisions of 1 Geo. 1, ch. 5, (Riot Act) not to be repealed, or affected by this Act.

Churches and places of worship to be within the Riot Act, tho' not registered.

XIV. *And whereas by a certain Act of the Parliament of Great Britain, passed in the twelfth year of the Reign of King George the Third, entitled "An Act for the better securing and preserving His Majesty's Dock Yards, Magazines, Ships, Ammunition and Stores," it is enacted, That "if any person or persons shall within the Realm, or in any of the Islands, Countries, Forts or Places thereunto belonging, wilfully and maliciously set on fire, or burn, or otherwise destroy, or cause to be set on fire or burnt, or otherwise destroyed, or aid, procure, abet or assist it the setting on fire, or burning, or otherwise destroying, of any of His Majesty's Ships or Vessels of War, whether the said Ships or Vessels of War be on float or building, or begun to be built, in any of His Majesty's Dock Yards, or building or repairing by contract in any private yard, for the use of His Majesty, or any of His Majesty's Arsenal, Magazines, Dock Yards, Rope Yards, Victualling Offices, or any of the buildings erected therein or*

British Statute, 12 Geo. 3, ch. 24, respecting the burning His Majesty's Ships, Naval Arsenal, &c. recited.

" belonging thereto, or any timber or materials there placed, for
 " building, repairing or fitting out of Ships or Vessels, or any of
 " His Majesty's Military, Naval, or Victualing Stores, or other
 " Ammunition of War, or any place or places where any such
 " Military, Naval or Victualing Stores, or other Ammunition
 " of War is, are, or shall be kept, placed or deposited, that then
 " the person or persons guilty of any such offence being thereof
 " convicted, in due form of Law, shall be adjudged guilty of
 " Felony, and shall suffer death, as in cases of Felony, with-
 " out benefit of Clergy:" *And whereas also*, by a certain
 " other Act of the Parliament of Great Britain, passed in the
 " Second and Third Years of the Reign of Queen Anne, enti-
 " tled "*An Act for punishing Mutiny, Desertion, and*
 " *false Masters, and for better paying of the Army*
 " *and Quarters, and for satisfying divers Arrears,*
 " *and for a further continuance of the powers of the*
 " *five Commissioners for the examining and determin-*
 " *ing the Accounts of the Army,"* it is enacted, That
 " if any Officer or Soldier in Her Majesty's Army,
 " shall either upon land out of England, or upon the
 " sea, hold correspondence with any rebel, or enemy of
 " Her Majesty, or give them advice or intelligence,
 " either by letters, messages, signs or tokens, or any
 " manner of way whatsoever, or shall treat with such rebels or
 " enemies, or enter into any condition with them without Her
 " Majestys's Licence, or Licence of the General, Lieutenant
 " General or Chief Commander, then every such person so
 " offending, shall be deemed and adjudged to be guilty of High
 " Treason, and suffer such pains and penalties as in case of
 " High Treason." *Be it therefore enacted*, That
 " nothing in this Act contained shall be construed
 " or taken to affect, in any manner, the provisions
 " of the above in part recited Acts, or either of
 " them.

British Statute, 2nd & 3rd Anne, ch. 20 making it High Treason for an Officer or Soldier to correspond with the Enemy beyond sea, re-cited.

The above Acts of 12 Geo. 3, ch. 24, and 2 & 3 Anne, ch. 20, not to be affected by this Act.

XV. And be it further enacted by the authority aforesaid,

That so much of an Act of the Parliament of this
 Province, passed in the Thirty-sixth Year of the Reign
 of King George the Third, entitled "*An Act for the*
 "*better regulation of certain Coins current in this*

Statutes of Upper Canada, 36 Geo. 3, ch. 1; 38 Geo.

3, ch. 1; 40 Geo. 3, ch. 1, so far as they make any offence named in them Capital, repealed.

“Province.”—And of An Act passed in the Parliament of this Province, in the Thirty-eighth Year of the Reign of King George the Third, entitled “*An Act to establish on a permanent footing the boundary lines of the different Townships of this Province.*” And of an Act passed in the Parliament of this Province, in the Fortieth Year of the Reign of King George the Third, entitled “*An Act for the further introduction of the Criminal Law of England in this Province, and for the more effectual punishment of certain offenders,*” and of the several Acts of the Parliament of this Province, passed for authorising the issuing of Government Debentures, as provides that any offence in any of those Statutes respectively mentioned, shall be punishable with death, shall be, and the same is hereby repealed; and that such offences shall continue to be of the degree of Felony, and the persons convicted thereof shall be liable to the punishments, or any of them, which are by this Act provided in respect to Felonies generally, which are not punishable with death.

And also, so much of any Statute as makes it Capital to Forge any Government Debenture, or utter any Forged Debenture &c.

Persons confessing or outlawed, to be punished in the same manner as if convicted by verdict.

as of Principals.

XVI. And be it further enacted by the authority aforesaid, That if any person shall be indicted for any offence made Capital by this, or any other Statute made or to be made, such person shall be liable to the same punishment, whether he or she shall be convicted by verdict or confession, or shall be outlawed, upon indictment; and this as well in the case of Accessories as of Principals.

XVII. And be it further enacted by the authority aforesaid, That if any person being arraigned upon any indictment for Treason or Felony, shall plead thereto a plea of “Not Guilty,” he shall by such plea, without any further form, be deemed to have put himself upon the Country for trial—and that if any person being arraigned upon any indictment for Treason or Felony, shall stand mute of malice, or will not answer directly to the indictment, in every such case it shall be lawful for the Court, if it shall so think fit, to order the proper officer to enter a plea of “Not Guilty,” on behalf of such person, and

Certain forms of arraignment dispensed with.

Standing mute.

the plea so entered, shall have the same force and effect, as if such person had actually pleaded the same.

XVIII. *And be it further enacted by the authority aforesaid,* That if any person indicted for any Treason or Felony, shall challenge peremptorily a greater number of the men returned to be of the Jury than such person is entitled by Law so to challenge, in any of the said cases, every peremptory challenge beyond the number allowed by Law, in any of the said cases, shall be entirely void; and the trial of such person shall proceed as if no such challenge had been made.

Challenging
peremptorily
more of the
Jury than
the Law
allows.

Such chal-
lenge to be
disregarded.

XIX. *And whereas* in certain cases of High Treason, as the Law now stands, the sentence or judgment required by Law to be pronounced or awarded against any persons convicted or adjudged guilty of the said crime, in such cases, is, that they should be drawn on a hurdle to the place of execution, and there be hanged by the neck, but not until they are dead, but that they should be taken down again, and that when they are yet alive their bowels should be taken out, and burnt before their faces; and that afterwards their heads should be severed from their bodies, and their bodies divided into four quarters, and their heads and quarters to be at the King's disposal: *And whereas* it is expedient in the said cases of High Treason to alter the sentence or judgment now required by Law:—*Be it therefore enacted by the authority aforesaid,* That in all cases of High Treason in which, as the Law now stands, the sentence or judgment ordained by Law is as aforesaid, the sentence or judgment to be pronounced or awarded from and after the passing of this Act against any person convicted or adjudged guilty shall be, that such person shall be drawn on a hurdle to the place of execution, and be there hanged by the neck until such person be dead; and that afterwards the body of such person shall be dissected and anatomized.

Sentence
in certain
cases of
High
Treason
mitigated.

XX. *And be it further enacted by the authority aforesaid,* That whenever any person shall be convicted of Murder and executed therefor, the body of such

Persons
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of Murder.

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murderer shall be delivered by the Sheriff, or his Deputy, and his Officers, to a Surgeon, for the purpose of being dissected and anatomized.

XXI. *And be it further enacted by the authority aforesaid,* That sentence shall be pronounced in open Court immediately after the conviction of such Murderer, and before the Court shall proceed to any other business, unless the Court shall see reasonable cause for postponing the same; in which sentence shall be expressed not only the usual judgment of death, but also the time appointed for the execution thereof, and the mark of infamy hereby directed for such offenders, in order to impress a just horror in the mind of the offender, and on the minds of such as shall be present, of the heinous crime of murder.

XXII. *Provided always, and be it enacted by the authority aforesaid,* That after such sentence pronounced as aforesaid, in case there shall appear reasonable cause, it shall and may be lawful to and for such Judge or Justice, before whom such criminal shall have been so tried, to stay the execution of the sentence, at the discretion of such Judge or Justice, regard being always had to the true intent and purpose of this Act: *Provided also,* that it shall be in the power of any such Judge or Justice, to appoint the body of any such criminal to be dissected and anatomized.

XXIII. *And be it further enacted by the authority aforesaid,* That from and after such conviction, and judgment given thereupon, the Gaoler or Keeper to whom such criminal shall be delivered for safe custody, shall confine such prisoner to some cell, or other proper and safe place within the prison, separate and apart from the other prisoners; and that no person or persons whatsoever, except the Gaoler or Keeper, or his Servants, shall have access to any such prisoner, without licence being first obtained for that purpose under the hand of such Judge or Justice before whom such offender shall have been tried, or under the hand of the Sheriff, his Deputy or Under

In case of respite, regulations may be relaxed. Sheriff: *Provided always*, that in case any such Judge or Justice shall see cause to respite the execution of such offender so condemned as aforesaid, such Judge or Justice may relax or release any or all of the restraints or regulations hereinbefore or hereinafter directed to be observed by the Gaoler or Keeper of the Prison where such prisoner shall be confined, by any licence in writing, signed by such Judge or Justice, for that purpose, for and during the time of such stay of execution, any thing hereinbefore contained to the contrary thereof notwithstanding.

Further regulations.

Food of Convict.

Attendance of Physician or Surgeon.

Punishment of Gaoler for disregarding these regulations.

XXIV. *And be it further enacted by the authority aforesaid*, That after sentence passed as aforesaid, and until the execution thereof, such offender shall be fed with bread and water only, except in case of any violent sickness, or wound, in which case some known Physician, Surgeon or Apothecary, may be admitted by the Gaoler or Keeper of the said Prison, to administer necessities, the christian and surname of such Physician, Surgeon or Apothecary, and his place of abode, being first entered in the books of such Prison or Gaol, there to remain; and in case such Gaoler or Prison Keeper shall offend against, or neglect to put in execution, any of the directions or regulations hereby enacted to be observed, such Gaoler or Prison Keeper shall for such offence forfeit his office, and be imprisoned for a time not exceeding three months, upon conviction thereof by indictment.

Benefit of Clergy abolished.

General provision for the punishment of offences not specified in this Act, which, before this Act, were punishable with death, either with or without benefit of Clergy.

XXV. *And be it further enacted by the authority aforesaid*, That from and after the passing of this Act, benefit of Clergy in this Province shall be abolished, and that the same need not in any case be prayed, and shall not in any case be allowed, any Law, Statute or Usage to the contrary notwithstanding; and that in all cases of crimes made punishable by this Act with death, the effect of such provision shall be the same as in the case of any offence which, before the passing of this Act, was made punishable with death without benefit of Clergy; and that all persons who may hereafter be duly

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convicted of any offence not specified in this Act, and which before the passing thereof was punishable in this Province with death, with or without benefit of Clergy, shall be liable to be banished, or to be transported beyond the seas for life, or for such term not less than seven years as the Court before which such person shall be convicted shall adjudge; or shall be liable, in case such Court shall think fit, to be imprisoned only, or imprisoned and kept to hard labour, or in solitary confinement in the Common Gaol, or in any Penitentiary or House of Correction that may be provided for such purposes, for any term not exceeding fourteen years, except persons convicted of returning from transportation or from banishment, with respect to whom the term of imprisonment, with or without hard labour, or by solitary confinement, may, if the Court shall think fit, be extended to the term of his or her natural life: and that in case of Manslaughter, the offender shall be liable to be fined or imprisoned, or both, in the discretion of the Court, *Provided* that such imprisonment shall not exceed twelve calendar months: *And provided*, that the offence of Manslaughter shall be punishable by such fine and imprisonment only, and not by all or any of the other descriptions of punishment in this clause before mentioned.

XXVI. *And be it further enacted by the authority aforesaid,* That if any person shall be convicted, after the passing of this Act, of Forgery, or of uttering any forged deed, will, instrument, note, bill or writing, or of falsely personating any person or persons, which forgery, or which uttering, or which false personating was, before the passing of this Act, punishable with death in this Province, the Court before which such person shall be convicted may, if they shall think fit, adjudge such person (unless in case of a female) to be set in the pillory, once or oftener, or to be once or oftener publicly or privately whipped, at such time or times, and at such place or places, as they may direct, which punishment shall either be in addition to any other punishment which the Court, according to law, may award, or otherwise, as may to them appear proper.

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CHARGE
OF
CHIEF JUSTICE ROBINSON,
TO THE GRAND JURY OF THE HOME DISTRICT,
APRIL, 1833.

*Mr. Foreman, and
Gentlemen of the Grand Jury :*

So far as I may judge from the Calendar, the number of criminal charges which you will be called on to investigate at the present Assizes is not unusually great, nor does there seem to be any thing remarkable in the character of the offences charged. And at all events you have been so frequently reminded of the principles which should govern your decision in respect to the several descriptions of crimes which are to be found in the Calendar before me, that I am sure I may not improperly waive any particular instruction to you upon this occasion, except in regard to one of the cases of homicide, which, from its particular circumstances, I shall feel it proper to make the subject of some observations to you, before you retire.

I am the more inclined to forbear entering at present into those explanations which you have most of you heard frequently repeated from this place, in order that I may, without trespass-

ing very unreasonably upon your time, take some notice of the material change which has been made in the Criminal Law of this Province, by a Statute recently passed. I think it will not be uninteresting to you, and that it will not be without its use, if I state plainly, and as shortly as the subject will admit, the intention and effect of that Statute. This is the first Court of Oyer and Terminer which has been convened in the Province since its passing, and the alterations which it has made in our Criminal Law are so extensive, and of so much interest, that it is fit they should engage particular attention upon this first occasion of carrying them practically into effect.

You are aware that in October 1763, soon after the definitive Treaty of Peace, which confirmed the cession of the Province of Quebec to the Crown of Great Britain, a Royal Proclamation was issued announcing the various arrangements which His Majesty had sanctioned for the well governing of that Province, and of the other important acquisitions made by His Majesty's arms in that successful war. At the time of the conquest, the Province of Quebec contained about 65,000 inhabitants, entirely Canadian French; and it was reasonably anticipated that the pursuits of commerce and agriculture would lead many to remove thither from the other dominions of Great Britain. With this expectation it was declared, in the Royal Proclamation I have referred to, that until Legislative Assemblies could be called—"All persons inhabiting in, or resorting to, the conquered Colonies might confide in the Royal protection for the enjoyment of the benefit of the Laws of England:" for which purpose His Majesty announced "that he had given power to erect Courts of Judicature, and Public Justice within the several Colonies for the hearing and determining all causes as well criminal, as civil, according to law and equity, and, as near as might be, AGREEABLY to the *Laws of England*."

It was in this manner and by this form of words that His Majesty gave to the Inhabitants of the Province of Quebec, both the civil and criminal Law of England, which being thus introduced, continued to rest upon the basis of this Proclamation until the year 1774, when in the reign of that same just and benevolent Sovereign, whose memory will ever be revered, a Statute was passed by the British Parliament, in which it was declared, that some of the provisions made by the Proclamation for the Civil Government of the Province had been found inapplicable to existing circumstances; and in a spirit of indulgent respect for the wishes and opinions of the people, who under their ancient government "had enjoyed for a long series of years a constitution and system of laws by which their persons and property had been protected, governed, and ordered," it was enacted that for the future "in all matters of controversy relative to property and civil rights, resort should be had to the laws of Canada as the rule for the decision of the same."

This enactment abrogated the law of England in respect to CIVIL MATTERS, and restored the ancient laws of Canada; but the CRIMINAL LAW of England was expressly retained in the Province by a clause in the same Statute, which admiring as I am sure we all sincerely do, the principles of our criminal law, and the spirit in which it is administered, I think it worth while to repeat to you in the terms in which it is expressed. It is in these words:—"And whereas the certainty and lenity of the criminal law of England, and the benefits and advantages resulting from the use of it, have been sensibly felt by the inhabitants from an experience of more than nine years, during which it has been uniformly administered: Be it therefore enacted, &c. That the same shall continue to be administered, and shall be observed as law in the Province of Quebec, as well in the description and quality of the offence, as in the method of prosecution and

trial, and the punishments and forfeitures thereby inflicted; to the exclusion of every other rule of criminal law, or mode of proceeding therein, which did, or might prevail in the said Province, before the year 1764, any thing in this Act to the contrary notwithstanding—subject nevertheless to such alterations and amendments as the Governor, Lieutenant Governor, or Commander-in-Chief for the time being, with the advice and consent of the Legislative Council of the said Province, shall from time to time cause to be made therein, in manner hereinafter directed.”

By the Statute passed in the 31st year of the same reign, which made this a separate Province, and gave to it a separate government, and a Legislature, the same power to make alterations and amendments in the Criminal Law, which in the clause I have cited from the former Statute was reserved to the Governor and Legislative Council of the Province of Quebec, was transferred to the Legislature of Upper Canada, so far as regarded this portion of the Province which had been thus divided.

The first Session of the Legislature of this Province under its separate government, and new constitution, took place in the year 1792; and the first Act of that Session was to substitute the law of England in the place of the law of Canada, “*as the rule of decision in all matters of controversy relative to property and civil rights.*” This had no respect to the Criminal Law which was allowed by the Legislature to rest in this Province, upon the foundation of the Statute of 1774, (14 Geo. 3, ch. 83) with any alterations which had in the mean time been made by the ordinances of the Governor and Legislative Council of Quebec. These alterations were neither many nor important, and the Legislature of this Province did not think it necessary to advert to the subject of our Criminal Law, with

any general view, until the year 1800, when it struck their attention that by the 14 Geo. 3, ch. 83, the criminal law of England had been introduced simply as it stood at that time, and that since the passing of that Statute, amendments had been made in it by the Mother Country, which it was expedient to introduce and adopt in this Province.

These amendments and improvements they did accordingly adopt, and incorporate them with our criminal law, by a short and comprehensive clause, enacting, "that the criminal law of England, as it stood on the 17th day of September, 1792, should be the criminal law of this Province." They carried forward the adoption, you will perceive, no further than to the 17th day of September, 1792, the day on which the first Session of the Legislature of Upper Canada was opened, conceiving, as I suppose, that with respect to any improvements made between that period and the year 1800, when they were passing this Act, it would better become them [as the country had enjoyed during that time a separate Legislature] not to adopt in the gross the changes made by another Legislative body, but to select and enact as measures of their own, such of them as they might think judicious, and adapted to this country.

Thus we see, that from the establishment of the British Government in Canada till the year 1774, the criminal law of England continued to be the criminal law of the Province of Quebec, (as it was then called) deriving its sanction from the King's Proclamation. From the year 1774 to the division of the Province, it rested upon the authority of a British Act of Parliament (14 Geo. 3, ch. 83) and continued indeed to do so here, until the year 1800, when the Legislature of Upper Canada recognized it as in force, and expressly established it as the criminal law of Upper Canada, adopting it as it stood on

the 17th September 1792. Throughout the whole of this period, from the year 1774 to 1800, and from thence to the present time, it has been subject to any alterations which the Legislative power acting in the Province of Quebec before its division, and in the Province of Upper Canada, since, has thought proper to introduce.

Such alterations, however, have been very sparingly made. They have neither been many nor very important. By an ordinance passed while the Province was undivided, simple larceny, when the goods did not exceed in value Twenty Shillings sterling, was made Petty Larceny only, whereas by the Law of England, to constitute the offence of Grand Larceny, the goods stolen need be of no greater value than Twelve Pence. And by the Legislature of this Province, since the division, some particular enactments have been made for punishing the counterfeiting of gold and silver coin, and of foreign bills and notes. But with these exceptions, and a very few others, it has only been necessary to inquire what the criminal law of England was on the 17th September, 1792, in order to learn what was the law in this Province, both as it respected the crime and punishment.

In the mean time, the criminal law has not been so stationary in England. The changes made in it, since the year 1792, have not extended to us; but they have been numerous, and have almost invariably tended, (particularly those of the latest date,) to mitigate the severity of punishment.

In imitation of this humane course, the Legislature of this Province passed in their last Session, the Act which I am about to explain to you, in which, proceeding upon the same principle of mitigating the severity of punishment, they have gone

considerably beyond the limits which have been set to the relaxation in England; while they have aimed at other advantages in their manner of making the alteration, which will appear to be of no small moment, especially if we consider the peculiar state of our Statute Law, arising from our situation as a Colony, and from our having adopted indiscriminately, the whole criminal Statute Law of England.

The recent Provincial Statute which I am speaking of, applies only to those offences which before its passing, were PUNISHABLE WITH DEATH, either with, or without benefit of Clergy, and it has these important effects upon our Criminal Law, and its administration.

1st. It sets forth in one Statute, (and that not a long one) all those cases in which the life of an inhabitant of this Province can be affected, by sentence of a Court of Law.

2nd. It reduces the number of those offences which are to be punished with death.

3d. It provides a suitable punishment for all those offences which, before the passing of this Act were punishable with death, with or without benefit of Clergy, but which since the passing of this Act, are to be no longer punishable with death.

4th. It makes certain alterations in the method of proceeding in criminal cases, among which are the abolishing entirely the privilege called "Benefit of Clergy," and the mitigating the sentence in the case of High Treason.

Before this Act was passed, you will remember, that if any inhabitant of this Province, desired to know with certainty, what criminal accusations could affect his life, he must in the first place, have examined carefully, all the British Statutes passed BEFORE THE 17th SEPTEMBER, 1792; because these

were all adopted by our Legislature in a body, and made to form part of our criminal code. He must in the next place, have examined the British Statutes passed SINCE 1792; because, as the British Parliament retained the power of making laws relating to crimes and punishments, which should apply in any part of the King's dominions, it is impossible to determine by any other means than an actual search into the Statute book, whether they have exercised that power or not, and in what cases. He must then have looked carefully over our Provincial Statutes, which now fill a volume of considerable bulk, and by which it will be found, that our Legislature have created some capital offences to be added to those adopted from the English Law. And after he had made these researches, which would have required no little time and labour, the investigation would not have been complete until some accurate compilation of good authority, of the criminal law generally had been referred to, for the purpose of ascertaining whether there were not some offences which, at common law, were capital, independently of any Statute.

In passing the Act to which I am now calling your attention, the Legislature have taken upon themselves the responsibility of this extensive search: they have expressly declared what offences shall hereafter be punished with death, and having specified these particularly, they have gone on to provide "that all persons who may hereafter be duly convicted of any offence not specified in this Act, and which before the passing thereof was punishable in this Province with death, with or without the benefit of Clergy, shall be liable to" certain other punishments which the Act particularly prescribes.

Thus, for the purpose of ascertaining what offences are capital in this Province, the reference will now be made to

this Statute of moderate length, which being in our own Statute Book, is easily and generally accessible.

And it is evidently for the purpose of fulfilling this object of the Statute the more completely, that the offences mentioned in the 14th section were particularly noticed. Those are offences which the British Parliament have made capital in all the colonies, and they are merely recited in this Statute, with a declaration that they are not to be affected by any thing contained in it. They are thus plainly spread to view, for the information of the people of this country, and are not left as heretofore, to be looked for in the British Statutes at large, where they might but too easily escape observation. In the same manner, and no doubt for the same purposes, the provisions of the Statute passed in the reign of George I, commonly called the Riot Act, and the provisions, with some alterations, of the Statute 25 Geo. II, respecting the passing sentence upon persons convicted of murder, are transferred from the British Statute Book, and made in effect part of this Act, in order that all may readily have knowledge of enactments so important in their nature. The latter are inserted as being expressly enacted by our Legislature—the former are merely recited as being a part of our criminal law by adoption, which this Act is not intended to interfere with: the effect as to both, is to place them distinctly under view, in order that all persons concerned, may have ready recourse to them.

Nevertheless, it is to be borne in mind, that the Imperial Parliament will still retain the power of creating other capital offences in this, as in all other portions of the King's dominions; and in this manner the catalogue contained in this Statute may be added to by a power beyond our own control; but this is inevitable; and in point of fact, I imagine the list of capital

offences, is by no means likely to be varied by any such Act—for I am not aware that the British Parliament has made any offence capital in the Colonies, or at least in this Colony, since we received our Constitution; or that there is now any British Statute in force, which has been passed within the last sixty years, under which the punishment of death can be inflicted in this Province, otherwise than from our voluntary adoption of the criminal law of England.

The first effect of this new Statute, **THE PRESENTING ALL CAPITAL OFFENCES IN ONE VIEW**, is one in which the general convenience, and the safety of individuals are consulted by an improved arrangement merely.

But the second, and most important effect of the Statute, is to make a very extensive change in our criminal law, by reducing greatly the number of capital offences. And to this, I now proceed to call your attention.

According to this Statute, the only offences to be hereafter punished with death in this Province, are the following:

Compassing or imagining the death of the King.

Levying War against the King.

Adhering to the King's enemies.

Murder.

Rescuing any person committed for Murder, or found guilty of Murder.

Rape.

Abusing a female child under the age of ten years.

Unnatural crimes.

Robbery.

Robbing the Mail of Letters.

Burglary.

Arson.

Such offences against the Riot Act as are capital in England.

Burning or otherwise destroying His Majesty's Ships, Arsenals, Magazines, or Naval or Military Stores.

Officers or Soldiers in the army, holding correspondence with rebels or enemies, without licence from the King or their Commanding Officer.

These two last mentioned offences, being made capital expressly by British Acts of Parliament, which are binding here, and in all other parts of the King's dominions.

Accessories before the fact, that is, persons who command, counsel, abet or procure the commission of any of these crimes, are in conformity to the general principle of law, made liable also by this Statute to Capital Punishment.

For all other offences, which before the passing of this Statute, were punishable with death, other punishments are expressly provided; so that it is in these specified cases, and in these only, that sentence of death can be passed. If there should be, however, any cases not specified in this Act, in which offences are made capital in this Colony, or in the Colonies or Dominions of the Crown generally, by the express words, or by the constitutional construction of any British Act of Parliament, which the Legislature has not adverted to, such British Statute must, of course, have its legal effect.

It may be interesting to you to learn the extent to which capital punishment has thus been abolished by the Legislature, and I will therefore enumerate the crimes for which under our general adoption of the criminal law of England, the offender must, before this Statute have been sentenced to death, not stop-

ping to give the several offences their proper technical character in the terms used in the Statutes, which would be tedious, and not taking upon myself to assure you that there may not be some inconsiderable error or omission in the statement.—Many of these offences it is to be remembered are not now capital in England, a more lenient punishment having been substituted by recent Statutes ; but being capital in England in the year 1792, they remained so in this Province until the passing of the Act of last Session :

Compassing the death of the King.

Levying war against the King in His realm.

Adhering to the King's enemies.

Slaying the Chancellor, Treasurer, or Justices of the Bench of Assize, being in the discharge of their duties.

Counterfeiting the King's Great or Privy Seal.

Counterfeiting the King's money.

Counterfeiting the money of other countries made current by the Crown.

Clipping or washing any money of the realm, or any money of other countries made current by proclamation.

Impairing, diminishing, scaling, or lightening the money of the realm for sake of gain.

Impairing, diminishing, scaling, or lightening the money of other countries made current by proclamation.

Any Smith, Engraver, Founder, &c. not employed in His Majesty's Mint, making any die, puncheon, stamp, mould, &c. for making any gold or silver coin current in this Kingdom.

Any Smith, Engraver, &c. not employed in the mint, &c. making or mending any edging tool, or instrument for making money, or cutting engine for cutting round blanks.

Buying or selling, or having in possession, without sufficient excuse, any puncheon, matrix, stamp, die, or tool used in coining.

Conveying out of His Majesty's mint any puncheon, die, stamp, or engine used for coining.

Persons not employed in the mint, marking on the edges any of the current coin, or any diminished or counterfeit coin.

Coloring, gilding, or casing over with gold or silver, or with any wash or materials producing the colour of gold or silver, any coin resembling the current coin of the realm.

Gilding or coloring silver blanks of a fit size to be coined into pieces resembling the current gold coin.

To wash, gild or colour a shilling, or six pence, or alter one so as to make it resemble a guinea or half guinea.

Filing, washing, or altering half pennies, or farthings, so as to make them resemble shillings or six pences.

Bringing into the realm counterfeit coin resembling foreign coins made current in the realm.

Maintaining or defending the authority, or jurisdiction of the Bishop of Rome in this realm, by writing or preaching, for the second offence, (High Treason.)

Putting in use any bull or instrument of absolution obtained from the See of Rome.

Withdrawing a subject from his allegiance in order to make him obedient to the See of Rome, or to any foreign power.

Advisedly maintaining and affirming any thing contrary to the succession of the Crown established by the Act of Settlement.

Soldiers corresponding with rebels, or enemies, without licence of the King, or of their General commanding.

Uttering counterfeit money—for the third offence—or committing a second of the kind within ten days.

Entering into the military service of the French King without licence,

Persons having custody of the King's armour, ordnance, or munition of war, embezzling or purloining the same.

Burning ships, or naval arsenals, or naval or military stores.

Sodomy.

Demolishing any church or chapel.

Murder.

Horse stealing.

Stealing sheep, or other cattle.

Killing sheep or cattle with intent to steal the carcase.

Stealing cloth from tenter grounds.

Stealing cotton, linnen, &c. from bleaching grounds.

Stealing goods to 40s. value in any ship, barge, or lighter, in a river or harbor.

Stealing goods to the value of 40s. on any wharf or quay.

Stealing a pump from a ship in distress.

Stealing from a vessel wrecked or in distress.

Stealing letters from any post bag, or post office.

Robbing any person.

Robbing a church or chapel.

Robbing in a dwelling house, the owner, his wife, children or servants being put in fear.

Robbing the dwelling house by breaking into the house, though no one be put in fear.

Robbing in a booth, or tent, the owner, his wife, children or servants being within the same, though not put in fear.

Breaking into a dwelling house by day or night, any person being therein, and put in fear.

Stealing in a dwelling house, any person being therein, and put in fear.

Stealing goods in any dwelling house or out-house belonging thereto, to the value of 5s. in the day time, though no person be therein.

Stealing privately from the person.

Stealing in any church or chapel.

Stealing privately in a shop to the value of five shillings.

Burglary.

Arson.

Rape.

Abduction of an heiress.

Forging any register of marriage.

Destroying any register book of marriages.

Publishing a forged marriage register as true.

Clerks or carriers of the Post Office, embezzling or destroying letters.

Destroying trees, planted for shade or ornament.

Returning from transportation.

Robbing a rabbit warren, armed and disguised.

Persons armed and disguised, entering any park or inclosure, and hunting, wounding or killing deer.

Forcibly rescuing any person in custody for such offence.

Persons armed and disguised, stealing fish out of a river or pond.

Rescuing any person in custody for such offence.

Falsely personating bail, or persons acknowledging fines, recoveries, deeds enrolled, statutes, recognizances, or judgments.

Taking reward on pretence of helping persons to recover stolen goods, (capital in those cases in which the previous larceny would be capital.)

Rescuing a person committed for murder, or convicted of murder, or going to, or during execution.

Persons (three or more) armed, assisting in exporting goods prohibited to be exported.

Or in landing or removing uncustomed goods.

Or in rescuing them after seizure.

Or in re-landing goods exported upon debenture.

Or in rescuing the same after seizure.

Or in rescuing a person apprehended for any offence made felony by a revenue act.

Or preventing the apprehension of such person.

Or being disguised while passing with smuggled goods.

Or wounding any officer of customs going on board of any vessel, or when on board.

Persons on shore or in a vessel or boat, maliciously shooting at any vessel or boat belonging to His Majesty's navy, or in the service of the customs, within any harbour.

Forging letters of attorney to transfer stock.

Falsely personating the owner of stock.

Forging letter of attorney or will of a seaman.

Uttering such forged letter of attorney or will.

Forging any deed, will, testament, bond, note or receipt.

Uttering or publishing the same as true.

Forging the acceptance of a bill of exchange.

Forging any accountable receipt.

Uttering either of these forged.

Sending threatening letters demanding money.

Rescuing any person lawfully in custody for such offence.

Sending letters threatening to kill, or to burn house, barn, &c. though no money be demanded.

Rescuing person in custody for such offence.

Not dispersing in obedience to the Riot Act.

Persons riotously assembled, pulling down any house, church or other buildings enumerated.

Hindering or hurting the person making proclamation under the Riot Act.

Maliciously destroying any lock, sluice or floodgate, on any navigable river erected by authority of Parliament.

Rescuing any person in custody for that offence.

Maliciously breaking down the bank of any river, whereby any lands shall be overflowed or damaged.

Killing or maiming cattle.

Rescuing persons committed for such offence.

Burning any stack of corn, straw, hay, or wood.

Rescuing any person committed for such offence.

Cutting hop binds in any hop plantation.

Wilfully setting on fire any mine or pit of coal.

Breaking into any house, shop, cellar, &c. with intent to cut, steal or destroy any linen, yarn, or cloth, or the tools or looms.

Cutting or destroying linen goods while bleaching.

Breaking into any house, &c. to cut or destroy any woollen goods, or the looms, machines, &c.

Cutting or destroying any woollen goods in the loom.

Destroying tools used in making such goods.

The same two offences as to velvet, or silk or cotton.

Maiming any person of malice aforethought, with intent to disfigure him.

Maliciously shooting at any person.

Rescuing any person in custody for that offence.

Persons convicted of assault, with intent to rob, breaking gaol or escaping before transportation.

Any officer or mariner of a ship, wilfully casting her away, or destroying her.

Falsely personating an out pensioner of Greenwich Hospital, (an offence which, under present circumstances, may possibly be committed in this Province.)

We have to add to these several capital offences created by our own Statutes, viz :

Uttering base coin, a second time.

Removing monuments placed at the angles of Townships.

Returning from banishment.

Forging government debentures, and—

Uttering them, knowing them to be forged.

In this long catalogue, there may be some two or three offences, respecting which it may be made a question whether the Statutes creating them, must not, from the subject matter, be taken to extend throughout the King's dominions, although they are not so expressed : and there may be a very few others, of which it may be doubted, whether the particular offence described in them can, in the nature of things, be committed out of England. With those qualifications however, we have a list of 126 capital offences, that is, offences expressly made punishable with death, without benefit of Clergy, of which all are now abolished, except those specified in our recent Statute.

And when it is considered moreover, that some of these offences, particularly the crimes of forgery, and false personat-

ing, are by various Statutes, subdivided into many specifications, which are severally made capital ;—that many crimes not capital when committed by any person for the first time, are made capital in the case of a second, or sometimes of a third offence ; and also, that of the immense number of Felonies not appearing in this list, because they are what are called Clergyable Felonies ; each might in any particular case, become in fact, a Capital Felony, by reason that the offender had been once before allowed his Clergy. When these things, I say, are considered in addition, it will be found that the number of capital offences actually abolished, must far exceed the whole number I have particularly enumerated, so that I doubt not we may safely say, that capital punishment has been taken away in more than 150 cases.

I should be performing a task by no means disagreeable to myself, and I dare say, the exposition would not be uninteresting to you, if I were to compare the footing upon which the criminal law is now placed in this Province with its present state in England, since the many Acts which have been recently passed, mitigating the severity of punishment. Neither would it be uninteresting to examine what offences continue to be retained as capital offences in other countries in Europe, or other countries, or colonies, in America, and to advert to the arguments upon which the total abolition of capital punishment, not excepting even the case of Murder, has been recently urged in the Legislature of a neighbouring State ; but these inquiries, or any other of a speculative kind, are apart from the strict line of our duty. We are met here to bear our several parts in the administration of the law as it is ; and it is important that we should confine ourselves to that duty. The care of amending the law, rests with the Legislature. It is for us to carry their Acts into effect, not presuming to censure them

for doing too much, nor stopping to inquire whether they might have done more.

I will, therefore, leave this subject, having thus simply placed before you the actual extent of the change; first, however, taking this occasion to remark, that while the law stood upon its former footing, as to the severity of punishment which it PERMITTED, it has been so carried into effect in this Province, that our criminal law, as it has been actually administered, will be found not to have been undeserving of that character for lenity, which in this sense has been conceded to the criminal law of England, by the most enlightened men of all countries. I mean that the innocent have found here the same protection in the independence, patience and humanity of juries, and speaking of my predecessors, I trust I may add, without indecency—in the impartiality of the Judge—while on the other hand, the guilty have found the same refuge in the merciful interposition of the Crown, and have not actually paid the dreadful forfeit of life, except for crimes which it is still deemed necessary and justifiable to punish with death.

You are well aware, that there have been in this Province for Horse stealing, and for other crimes, a great number of capital convictions; but, speaking from what I can recollect, and from what I remember to have heard, I believe I may say, that the number of cases in which sentence of death has been actually executed, has not exceeded forty, in the forty years which have elapsed, since this Province had a separate government. Of this number which I do not speak of as small, [and indeed I imagine it is something over stated,] eight were executed for High Treason, committed during the late war, and the others were, with but very few exceptions, persons convicted of Murder. I can call to mind indeed at present, no other

exceptions than one, about thirty-five years since, for stealing from the dwelling house—another executed in this town for forgery about the same period, and another for an aggravated offence of Arson, committed in the District of London, nearly twenty years ago. Since that period, I think none have been executed, but those convicted of murder.

This retrospect may appear to you neither unsatisfactory nor uninteresting at this particular time, when we are about to enter upon the administration of a system of criminal law, more lenient in the letter, and therefore more congenial to the feelings of those whose duty it is to enforce it.

The secondary punishments which the Court is now at liberty to inflict, will be rendered, I trust, fully effectual at no distant day by the completion of that design for establishing a Penitentiary, which the Legislature has finally decided upon, and of which the execution has been entrusted to able hands.

If I had not already trespassed for an unusual time upon your attention, I should gladly take this opportunity of advert-
ing to other acts of the Legislature which make convenient provisions for the bailing, commitment, removal, and trial of prisoners ; for apprehending and delivering up to justice fugitive offenders from other countries ; and for abolishing corruption of blood upon attainder, except in the case of high treason. So far as any of the provisions contained in these Statutes are to be acted upon by Magistrates, and other officers concerned in administering justice, I trust no difficulty will be found in carrying them into effect. If any points in them serve to occasion doubts in practice, I shall take another occasion of advert-
ing to them, for the information of such members of any future Grand Jury as may be in the commission of the peace.

The case in the calendar of prisoners committed for trial at this assizes, which I alluded to as requiring some particular explanations for your guidance, is the charge against Peter Soules for manslaughter. It is termed manslaughter in the calendar, because it is for that offence only, and not for murder that the prisoner was committed by the Coroner. Having had judicially before me the inquisition returned by the Jury, and the evidence on which it was founded, upon an application which was made to me to admit the prisoner to bail, I have acquired such a knowledge of the circumstances as enables me to state to you that he is charged with causing the death of a woman, by negligently driving against her on the highway.

A case of a similar description was tried in this District not very long ago, and as I desire not to say any thing to you at present in relation to the particular circumstances of this case, I will merely repeat to you the remarks which I thought it proper to make to the Grand Jury upon the occasion I refer to, and will state as I then stated, that we have all of us had too frequent opportunities of observing how heedlessly and wantonly life is endangered by the furious driving of thoughtless or intemperate persons upon the public highway; but this is not the occasion to dwell upon this description of misconduct, because this particular case must first be dispassionately determined, and if, upon the evidence before you, the death shall not seem to have proceeded from an abuse which is but too common in this country, the prisoner should of course not suffer from the indignation which the misconduct of others in such cases as I have alluded to is calculated to excite. If the death of the unfortunate woman who suffered in this instance shall appear to you to have arisen from an accident, such as due caution would not have guarded against, and if the prisoner was doing nothing unlawful at the time, then he should be discharged from the

indictment altogether. If, on the other hand, the death was occasioned by his act, and if that act proceeded from a want of ordinary care, but there was nothing in his conduct indicating either malice towards the deceased or a cruel or wanton disregard of her life, then the offence would amount to manslaughter. But if, unhappily, it should seem to you that the act was wilful; (notwithstanding it could not, in the nature of things, have been provoked) that it arose from a heedless, reckless disposition, under the impulse of which the prisoner disregarded the injury likely to be inflicted by his rash and improper conduct; if these should appear to be the circumstances of this case, then it would be proper that you should place the prisoner on his trial for murder. By the Court and Petit Jury, the circumstances would be more minutely and scrupulously weighed upon the trial: and it is proper that you should present the charge in that shape, if you really think it doubtful, upon the evidence, whether the prisoner's conduct does not deserve such a construction. The safety of human life forbids us to look otherwise than with the most rigid scrutiny into every act that has occasioned the violent death of a fellow being;—when that scrutiny has been completed, if a doubt remains, it is always thrown into the scale of mercy.

I will now detain you no longer, gentlemen, except to request that you will make the usual examination into the state of the gaol, and the manner in which the prisoners, civil and criminal are kept. If your inquiries should enable you to suggest any thing which can properly be done to diminish the evils of imprisonment, I shall be happy to do whatever may be in my power towards its accomplishment.